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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

In re XIOMARA A., a Person Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

RICARDO G.,

Defendant and Appellant.

B290942

(Los Angeles County
Super. Ct. No. DK15309A)

APPEAL from an order of the Superior Court of
Los Angeles County, Brett Bianco, Judge. Affirmed.

Emery El Habiby, under appointment by the Court of
Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Peter Ferrera, Principal Deputy
County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Ricardo G. appeals from the juvenile court's order terminating his parental rights over his daughter Xiomara A. and placing her with a nonrelative prospective adoptive family. Ricardo G. argues the court erred by failing to apply the relative placement preference under Welfare and Institutions Code section 361.3¹ and the parent-child relationship exception under section 366.26, subdivision (c)(1)(B)(i). Ricardo, however, lacks standing to appeal Xiomara's placement and forfeited these arguments by failing to raise them in the juvenile court. Moreover, the relative placement preference did not apply to Xiomara's placement because the court had already declared adoption as the permanent plan. Finally, the juvenile court did not abuse its discretion by ruling the parent-child relationship exception did not apply. Therefore, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Xiomara's Detention and Initial Placement*

In January 2016 the Los Angeles County Department of Children and Family Services filed a petition under section 300 alleging then two-year-old Xiomara was at risk of serious physical harm as a result of her mother's physical abuse, her parents' neglect, and her parents' history of domestic violence. At the time Xiomara lived with her parents in the home of her paternal grandparents. The juvenile court detained Xiomara,

¹ Statutory references are to the Welfare and Institutions Code.

and the Department placed Xiomara with her paternal great aunt and uncle. Following the jurisdiction and disposition hearing in April 2016, the court sustained the petition, declared Xiomara a dependent, removed her from her parents, ordered reunification services, and continued Xiomara's placement with her paternal great aunt and uncle.

By September 2016 the Department had moved Xiomara to the home of her maternal great aunt. In October 2016 Xiomara's maternal great aunt told the Department she was not interested in providing a permanent home for Xiomara, and Xiomara's maternal grandmother expressed interest in adopting her. In March 2017 Xiomara's paternal grandmother also requested the Department assess her for permanent placement.

B. The Section 366.26 Hearing

On June 27, 2017 the juvenile court terminated reunification services and set a hearing to select and implement a permanent plan for Xiomara under section 366.26. In its report prior to the initial section 366.26 hearing on October 23, 2017, the Department stated it had "safety concerns" with both grandmothers and recommended against permanent placement with either of them. Both grandmothers had a history with the Department, and Xiomara's paternal grandparents failed to protect her from her parents' neglect and abuse while she lived with them. Both grandmothers also had "unhealthy relationship[s]" with Xiomara's parents, which included domestic violence.

The juvenile court continued the hearing and ordered the Department to continue investigating all appropriate relatives and nonrelative extended family members who would accept a

permanent plan for Xiomara. On December 12, 2017 the Department placed Xiomara with a prospective adoptive family unrelated to Xiomara while the Department continued investigating her grandmothers for permanent placement.

In its report prior to the continued hearing on January 24, 2018, the Department again recommended against placing Xiomara with either grandmother. At the hearing the court found adoption was appropriate and ordered adoption as the permanent plan. The court ordered the Department to continue assessing Xiomara's grandmothers for adoptive placement and again continued the hearing.

At the next hearing, on June 20, 2018, the Department reported the social worker conducting the Resource Family Approval (RFA) for Xiomara's maternal grandmother recommended against placing Xiomara with her because of her prior history with the Department.² The Department also denied approval for Xiomara's paternal grandmother. Counsel for the Department recommended the juvenile court terminate parental rights, continue Xiomara's placement with her nonrelative caregivers, and designate them as the prospective adoptive parents.

Xiomara's mother objected to terminating her parental rights and asked the court to place Xiomara with her maternal grandmother. Ricardo also objected to the Department's recommendation that the court terminate his parental rights and argued the parent-child relationship exception applied. He

² The RFA process is a unified approach for licensing foster homes, approving relatives as caregivers, and approving guardians and adoptive families. (§ 16519.5, subd. (a).)

contended that he visited Xiomara consistently and that she would benefit from her relationship with him. Ricardo did not request placement of Xiomara with anyone in particular and did not object to her placement with her nonrelative caregivers.

The court found that Xiomara was adoptable and that no exception applied. The court also found neither parent had maintained regular visitation with Xiomara or established a bond with her. The court found that any benefit to Xiomara from her relationship with either parent was outweighed by the physical and emotional benefit Xiomara would receive through the permanency and stability of adoption and that adoption was in her best interest. The court therefore terminated the parental rights of Ricardo and Xiomara's mother. The court rejected a request by Xiomara's mother to place Xiomara with her maternal grandmother and designated Xiomara's nonrelative caregivers as prospective adoptive parents. Ricardo timely appealed. Neither Xiomara's mother nor her grandmothers appealed.

DISCUSSION

Ricardo argues the juvenile court erred by denying placement of Xiomara with her maternal grandmother following the section 366.26 hearing in June 2018 and by failing to independently evaluate her paternal grandmother under the relative placement preference before terminating Ricardo's parental rights.³ He also argues the juvenile court erred in

³ Section 361.3 establishes a legislative preference that the juvenile court place a dependent child removed from parental custody with a qualified relative if such a placement has been requested and is otherwise appropriate. Section 361.3,

failing to apply the parent-child relationship exception. Neither argument warrants reversal.

A. *Ricardo Lacks Standing To Raise, and Forfeited His Arguments Based on, the Relative Placement Preference, Which in Any Event Did Not Apply to Xiomara's Placement*

“Whether a person has standing to raise a particular issue on appeal depends upon whether the person’s rights were injuriously affected by the judgment or order appealed from. [Citation.] A person does not have standing to urge errors on appeal that affect only the interests of others. [Citation.] Accordingly, a parent is precluded from raising issues on appeal which do not affect his or her own rights.” (*In re A.K.* (2017) 12 Cal.App.5th 492, 499; see *In re K.C.* (2011) 52 Cal.4th 231, 236 “[a]lthough standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal”].)

“[A] parent generally does not have standing to raise placement issues on appeal where the parent’s reunification services have been terminated. This is because decisions concerning placement of the child do not affect the parent’s interest in reunification when the parent is no longer able to reunify with the child.” (*In re J.Y.* (Dec. 26, 2018, No. C082548)

subdivision (a), provides: “In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.” Subdivision (c)(1) defines “preferential consideration” to mean “the relative seeking placement shall be the first placement to be considered and investigated.”

30 Cal.App.5th 712, ___ [2018 WL 6787125, p. 3]; see *In re A.K.*, *supra*, 12 Cal.App.5th at p. 499; *In re Jayden M.* (2014) 228 Cal.App.4th 1452, 1459-1460.) There is an exception to this general rule when a minor's placement may affect the selection of an appropriate permanent plan or a parent's legal status with respect to the minor. (*In re J.Y.*, at p. 3; see *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1054 [even after reunification services are terminated, a parent has standing to appeal a minor's placement with a nonrelative where the child's placement "has the potential to alter the juvenile court's determination of the child's best interests and the appropriate permanency plan for that child, and may affect a parent's interest in his or her legal status with respect to the child"]; *In re H.G.* (2006) 146 Cal.App.4th 1, 9-10 [same].)

The juvenile court terminated Ricardo's reunification services on June 27, 2017. Xiomara's placement on June 20, 2018, therefore, did not affect her father's interest in reunification. (*In re J.Y.*, *supra*, 30 Cal.App.5th at p. ___ [2018 WL 6787125, p. 3]; see *In re A.K.*, *supra*, 12 Cal.App.5th at p. 500 [after the juvenile court terminated the father's reunification, the father could not "establish that his rights and interest in reunification [were] injuriously affected by any failure to consider the paternal grandmother for placement at the section 366.26 hearing"].) Moreover, the court selected adoption as the permanent plan in its order of January 24, 2018, and Ricardo does not challenge that order or the permanent plan. Thus, Xiomara's placement "did not have the potential to alter the juvenile court's determination regarding the appropriate permanent plan" or otherwise affect Ricardo's legal status with respect to Xiomara. (*In re J.Y.*, at p. 3.)

Ricardo argues he has standing because the court's failure to place Xiomara with her maternal grandmother "injuriously affected" his interest in Xiomara's "companionship, custody, management, and care." Placement with Xiomara's maternal grandmother, Ricardo argues, "could have made involuntary termination of his parental rights unnecessary under section 366.26, subdivision (b)(3), or section 366.26, subdivision (c)(1)(A)" Both of these provisions, however, apply only when a minor already lives with a relative. For example, section 366.26, subdivision (b), establishes a legislative preference for adoption but allows a juvenile court to appoint a relative "with whom the child is currently residing" as legal guardian when adoption is not available. (§ 366.26, subd. (b)(3).) Here, the court had already selected adoption as the permanent plan, and Xiomara was not residing with any relative at the time of the section 366.26 hearing. Similarly, section 366.26, subdivision (c)(1)(A), provides an exception to termination of parental rights when "[t]he child is living with a relative who is unable or unwilling to adopt the child."

Even if Ricardo had standing to raise the relative placement preference, he forfeited his arguments based on the preference by not raising them at the June 20, 2018 hearing and by failing to object to Xiomara's placement with her nonrelative caregivers. (See *In re A.K.*, *supra*, 12 Cal.App.5th at pp. 500-501.) Moreover, Ricardo does not challenge the court's finding that Xiomara is adoptable or its order declaring adoption as the permanent plan.

Finally, even if Ricardo had standing and had preserved his arguments on appeal, the relative placement preference did not apply at the section 366.26 hearing in June 2018 because the

court selected adoption as the permanent plan in January 2018. (See *In re K.L.* (2016) 248 Cal.App.4th 52, 66 [“[t]he section 361.3 relative placement preference does not apply where, as here, the social services agency is seeking an adoptive placement for a dependent child for whom the court has selected adoption as the permanent placement goal”]; *In re M.M.* (2015) 235 Cal.App.4th 54, 63 [relative placement preference did not apply after the juvenile court terminated reunification services and identified adoption as the permanent plan]; *In re Lauren R.* (2007) 148 Cal.App.4th 841, 854-856 [§ 361.3 preference did not apply after the juvenile court had identified adoption as the child’s permanent plan].)

B. *The Juvenile Court Did Not Abuse Its Discretion in Terminating Ricardo’s Parental Rights*

“At a section 366.26 permanency planning hearing, the juvenile court determines a permanent plan of care for a dependent child, which may include adoption. [Citations.] ‘If the dependent child is adoptable, there is strong preference for adoption over the alternative permanency plans.’ [Citations.] In order to avoid termination of parental rights and adoption, a parent has the burden of proving, by a preponderance of the evidence, that one or more of the statutory exceptions to termination of parental rights set forth in section 366.26, subdivision (c)(1)(A) or (B) apply. [Citations.] The court, ‘in *exceptional circumstances*,’ may ‘choose an option other than the norm, which remains adoption.’ [Citation.] The parental benefit exception applies when there is a compelling reason that the termination of parental rights would be detrimental to the child. This exception can only be found when the parents have

maintained regular visitation and contact with the child *and* the child would benefit from continuing the relationship.” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 394-395; accord, *In re Breanna S.* (2017) 8 Cal.App.5th 636, 645.)

A court’s decision that a parent has not met his or her burden of showing the parent-child relationship exception applies “may be based on any or all of the component determinations—whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes ‘a compelling reason for determining that termination would be detrimental to the child.’” (*In re Breanna S.*, *supra*, 8 Cal.App.5th at pp. 646-647; see § 366.26, subd. (c)(1)(B).) “When the juvenile court finds the parent has not maintained regular visitation or established the existence of the requisite beneficial relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. [Citations.] When the juvenile court concludes the benefit to the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion.” (*In re Breanna S.*, at p. 647; accord, *In re Elizabeth M.* (2018) 19 Cal.App.5th 768, 782.)

The juvenile court found that Ricardo did not maintain regular visitation with Xiomara or establish a parental bond with her and that any benefit to Xiomara from her relationship with Ricardo was outweighed by the physical and emotional benefit she would receive from the permanency and stability of adoption. Ricardo contends he established the existence of a beneficial parental relationship within the meaning of section 366.26,

subdivision (c)(1)(B)(i), because, contrary to the juvenile court's findings, he maintained regular visitation and had a strong bond with Xiomara. However, even if the record compelled these findings (which is doubtful), Ricardo has not demonstrated the juvenile court abused its discretion by concluding Ricardo's relationship with Xiomara did not outweigh the well-being she would gain in a permanent home with adoptive parents.

“Evidence that a parent has maintained “frequent and loving contact” is not sufficient to establish the existence of a beneficial parental relationship.” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Collin E.* (2018) 25 Cal.App.5th 647, 663.) “A biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent.” (*In re Marcelo B.*, at p. 643.) To overcome the statutory preference for adoption, the biological parent must show that “severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed.” (*In re Collin E.*, at p. 663; *In re Marcelo B.*, at p. 643.)

Ricardo cites evidence of several positive interactions he had with Xiomara. He asserts that Xiomara was “happy, comfortable, and smiled” during their visits and that she would “run up to [him] yelling ‘daddy’ and give him a ‘big warm-hearted hug’” when she saw him. Ricardo also reports Xiomara “was disappointed” when Ricardo missed visits with her. This evidence, however, “falls far short of demonstrating a substantial emotional attachment that would cause [a child] to suffer great harm if severed.” (*In re Breanna S.*, *supra*, 8 Cal.App.5th at

p. 648; see *ibid.* [mother's appropriate and positive visits with her child, coupled with the child's ambivalence about adoption, was insufficient to establish the parent-child relationship exception].) Indeed, Ricardo cites no evidence of the detriment Xiomara would suffer, if any, if the court terminated his parental rights. Therefore, he has not demonstrated the juvenile court abused its discretion in ruling the parent-child relationship exception did not apply.

DISPOSITION

The juvenile court's order terminating parental rights is affirmed.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.